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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,751	11/12/2003	Jean-Laurent Wilson	400400	7550
7590	03/14/2006		EXAMINER	
Harold V. Stotland Seyfarth Shaw Suite 4200 55 East Monroe Street Chicago, IL 60603-5803			HORTON, YVONNE MICHELE	
			ART UNIT	PAPER NUMBER
			3635	
DATE MAILED: 03/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/706,751	WILSON, JEAN-LAURENT
	<b>Examiner</b> Yvonne M. Horton	<b>Art Unit</b> 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 December 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6, 15-19 and 21-29 is/are pending in the application.
  - 4a) Of the above claim(s) 7-14 and 20 is/are withdrawn from consideration.
- 5) Claim(s) 21-29 is/are allowed.
- 6) Claim(s) 1-6 and 15-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

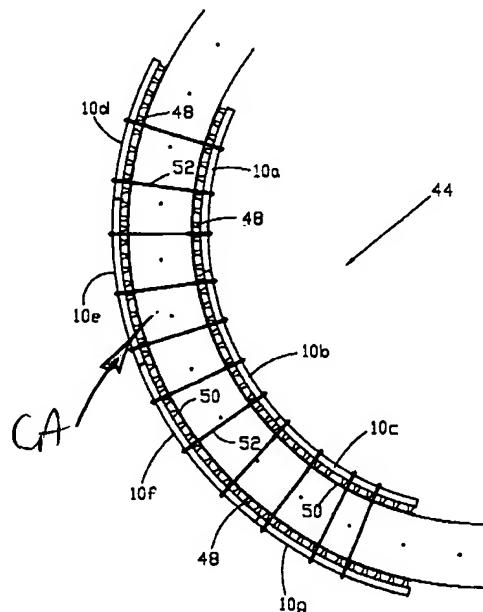
1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

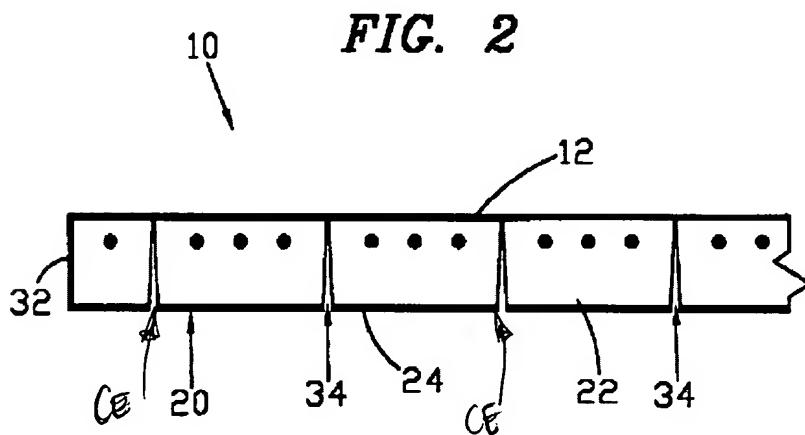
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 15, and 17-19 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,806,266 to JENNINGS et al. JENNINGS et al. discloses the use of a structure (44) for forming a vertically oriented wall including a flexible front panel (10d-g) and a flexible rear panel (10a-c) connected by a plurality of cross members (52) thereby forming a cavity (CA), see the figure below, for accepting filler



material therein, column 1, lines 65-67, such that rear panel (10a-c), at least includes a deformable portion (34) which allows for the rear panel (10a-c) to deform and adjust to form an arcuate configuration. Regarding claim 2, the at least one deformable portion (34) is laterally expandable to form a concave front wall, see figure 5. In reference to

claim 3, the at least one deformable portion (34) is also laterally contractible which allows for the front wall (10d-g) to be convex. Regarding claim 4, the at least one deformable portion (34) includes opposing channel edge sections (CE), see the marked figure below, that define a rearward facing channel (34). In reference to claim 5,



the opposed channel edge sections (CE) are adjacent when the wall structure is straight, see figure 2. Regarding claim 6, the deformable portions (34) includes opposing channel edge sections (CE), see the marked figure above, that define a rearward facing channel (34) wherein the sections (CE) are spaced apart when in a straight configuration, see figure 2, but allows for the distance there between to contract for a convex wall or expand for a concave wall. In reference to claim 15, the structure (44) includes at least one horizontal strap member (36) secured laterally across the structure (44) to secure the structure (44) in an arcuate configuration. Regarding claim 17, the filler material consists of concrete (column 1, lines 65-67). In reference to claim 18, the deformable portions (34) are positioned between the cross members (52). Regarding claim 19, the structure (44) of JENNINGS et al. includes a plurality of deformable portions (34).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 16 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,806,266 to JENNINGS et al. JENNINGS et al. discloses the basic claimed structure except for teaching the use of forming the device from a polypropylene material. Although JENNINGS et al. does not disclose this, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known material on the basis of its suitability for the use intended as an obvious matter of design choice. For instance, plastic is much lighter in weight than metal and usually costs less. Also, a plastic form might prove desirable in an environment where there may be more moisture than usual, and a metal form would be appropriate in environments that are known to be fairly dry because exposing metal to moisture destroys the form and cuts back on the life of the device due to a higher chance of corrosion.

***Allowable Subject Matter***

Claims 21-29 are allowed.

***Response to Arguments***

Applicant's arguments filed 12/17/06 have been fully considered but they are not persuasive. In response to the applicant's argument that JENNINGS et al. does not disclose "at least one laterally deformable portion which allows for deforming of the rear panel", the gap (34) allows for deformation (curving or going from straight to curve) of

the rear portion in that as the rear portion curves or straightens, the gaps either increase or decrease to accommodate the desired shape.

In response to applicant's argument that "the laterally deformable portion are disposed along the length of the wall from the top to the bottom", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In reference to the gap not being "longitudinally disposed", the gaps (34) clearly extend from the top of the panel to the bottom of the panel spaced along the length (longitudinally) thereof.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Art Unit 3635  
03/07/06

  
Carl D. Friedman  
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